Supreme Court, U.S.
FILED

(1)

03 579 OCT 8 - 2003

Case No. _____

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

JOHNNY DIAZ,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

GEORGE S. LeMIEUX
Deputy Attorney General

CAROLYN M. SNURKOWSKI
Assistant Deputy Attorney General

ROBERT J. KRAUSS*
Chief - Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals

HELENE S. PARNES
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
3507 E. Frontage Road
Tampa, Florida 33607
(813) 287-7900

**Counsel of Record*

40 pp

QUESTION PRESENTED

WHETHER THE DECISION OF THE FLORIDA SUPREME COURT PROHIBITING A LAW ENFORCEMENT OFFICER FROM REQUESTING A DRIVER'S LICENSE AND VEHICLE REGISTRATION FROM THE DRIVER OF A VALIDLY STOPPED VEHICLE, AFTER THE INITIAL PURPOSE OF THE STOP HAS CONCLUDED, IS IN CONFLICT WITH DECISIONS OF VARIOUS FEDERAL AND STATE APPELLATE COURTS AND IS AN UNDULY EXPANSIVE APPLICATION OF THIS COURT'S DECISIONS IN *PROUSE v. DELAWARE* AND *FLORIDA v. ROYER*.

TABLE OF CONTENTS

Page(s)

QUESTION PRESENTED. i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iii

OPINIONS BELOW 1

JURISDICTION 2

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED 2

STATEMENT OF THE CASE 3

REASONS FOR GRANTING THE WRIT 5

THE COURT SHOULD ACCEPT JURISDICTION TO RESOLVE THE CONFLICT WHICH EXISTS IN VARIOUS FEDERAL AND STATE APPELLATE COURTS AS TO WHETHER A LAW ENFORCEMENT OFFICER MAY, AFTER THE INITIAL PURPOSE OF A VALID STOP HAS BEEN CONCLUDED, REQUEST A DRIVER'S LICENSE AND VEHICLE REGISTRATION FROM THE DRIVER.

CONCLUSION 12

APPENDIX 12

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Diaz v. State,
800 So. 2d 326 (Fla. 2d DCA 2001) 1

Delaware v. Prouse,
440 U.S. 648 (1979) 5,12

Florida v. Royer,
460 U.S. 491, 497, 75
L. Ed. 2d 229, 103 S. Ct. 1319 (1983) 5,9

Maryland v. Wilson,
519 U.S. 408 (1997) 7

McGaughey v. State,
37 P.3d 130, 136
(Okla. Crim. App. 2001) 8,11

Ohio v. Robinette,
519 U.S. 33, 117 S. Ct. 417,
136 L. Ed. 2d 347 (1996) 9

Pennsylvania v. Mimms,
434 U.S. 106 (1977) 7

People v. Bradley,
292 Ill. App. 3d 208, 685 N.E.2d 426
(Ill. 4th DCA 1997),*cert. denied*,
524 U.S. 931 (1998) 10

People v. Redinger,
906 P.2d 81 (Colo 1995) 11

Terry v. Ohio,
392 U.S. 1 (1968) 6

State of Ohio v. Chatton,
11 Ohio St. 3d 59, 463 N.E.2d 1237
(1984),*cert. denied*, 469 U.S. 856
(1984) 11

State v. Bass,
609 So. 2d 151 (Fla. 5th DCA 1992) 3

State v. DeArman,
54 Wash. App. 621, 774 P.2d 1247
(Wash. Ct. App. 1989) 11

State v. Diaz,
850 So. 2d 435 (Fla. 2003) 1

State v. Farley,
308 Ore. 91, 775 P.2d 835 (1989) 11

State v. Hill,
606 A.2d 793 (Me. 1992) 10

State v. Taber,
73 S.W.3d 699 (Mo. Ct. App. 2002) 11

State v. Martinez,
136 Idaho 436, 34 P.3d 1119 (2001) 12

State v. Swords,
258 Ga. App. 895, 575 S.E.2d 751
(Ga. 2d DCA 2002) 11

State v. Wikso,
738 So. 2d 390 (Fla. 4th DCA 1999) 3

United States v. Dunson,
940 F.2d 989 (6th Cir. 1991) 9

United States v. Elmore,
304 F.3d 557 (6th Cir. 2002) 8

United States v. Erwin,
155 F.3d 818 (6th Cir. 1998) 8

United States v. McSwain,
29 F.3d 558 (10th Cir. 1994) 10,11

CONSTITUTIONS AND STATUTES

28 U.S.C. § 1257(a) 2

Article I, Section 12,
Florida Constitution 2, 10

Chapter 322, Florida Statutes (2003) 6

CASE NO. _____

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

JOHNNY DIAZ,

Respondent.

OPINION BELOW

The decision from which Petitioner seeks to invoke the discretionary review of this Court is reported as *State v. Diaz*, 850 So. 2d 435 (Fla. 2003).

Petitioner's Appendix contains the opinion of the Florida Supreme Court below, Case No. SC01-2779, (A 1-16), as well as the court's order denying rehearing. (A 17). The appendix further contains the opinion of the Florida Second District Court of Appeal, *Diaz v. State*, 800 So. 2d 326 (Fla. 2d DCA 2001). (A 18-19) The parties will be referred to as they appear before this Court or as they stood in the court(s) below.[1]

---

[1]The symbol "A" followed by the appropriate page number expresses a citation to the materials contained in the Appendix to this petition.

JURISDICTION

The decision below in the Supreme Court of Florida was entered on May 15, 2003. Petitioner's Motion for Rehearing was denied July 15, 2003. This Court has jurisdiction pursuant to 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner contends that the following amendments to the United States Constitution and a related provision of the Florida Constitution are involved:

The Fourth Amendment of the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Fourth Amendment is applicable to the states through the Fourteenth Amendment of the United States Constitution which provides in pertinent part:

> Section 1. No State shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Article I, § 12 of the Florida Constitution provides in pertinent part:

> Searches and seizures. - This right shall be construed in conformity with the 4th Amendment to the United States Constitution, as interpreted by the United States Supreme

> Court. Articles or information obtained in violation of this right shall not be admissible in evidence if such articles or information would be inadmissible under decisions of the United States Supreme Court construing the 4th Amendment to the United States Constitution.

STATEMENT OF THE CASE

The material and relevant facts were succinctly set forth by the Florida District Court of Appeal, Second District, and adopted by the Florida Supreme Court in the body of its decision as follows:

> A Hillsborough County Deputy Sheriff observed a vehicle driven by Diaz pass by with a temporary tag on the top of the rear window. Because he could not read the tag, the deputy initiated a traffic stop. At the suppression hearing, the deputy testified that as he approached the car he could clearly read the tag including the expiration date and found nothing improper. He walked up to the driver's side of the car and obtained information from Diaz, the driver, which ultimately led to the charge against Diaz of felony driving with a suspended license. (A 2)

The Florida Supreme Court observed that the Second District Court of Appeal had "held that once the officer had found the temporary tag to be proper, no further stop, detention, or inquiry was justified," but that other Florida appellate courts had held contrarily by determining that once a vehicle was properly stopped, a law enforcement officer may continue the investigation and ask to see the driver's license and registration, citing *State v. Wikso*, 738 So. 2d 390 (Fla. 4th DCA 1999), and *State v. Bass*, 609 So. 2d 151 (Fla. 5th DCA 1992). (A 1-2)

The Florida Supreme Court, in a 5-1 opinion, held that "[b]ecause the law enforcement officer here had no justification

for continuing the restraint of this motorist and obtaining information from him after it was clearly determined that no question remained concerning a violation of law or the validity of the car's temporary license plate," the decision of the Second District Court of Appeal was approved and the decisions in *Wikso* and *Bass* were disapproved. (A 1, 8) The majority opinion recognized that a conflict exists in both federal and state jurisdictions as to whether it is constitutionally permissible for a law enforcement officer to approach the operator of a lawfully stopped vehicle in order to obtain a driver's license and vehicle registration even after the officer has satisfied the initial purpose of the stop. (A 6-7)

REASONS FOR GRANTING THE WRIT

THE FOURTH AMENDMENT DOES NOT FORBID A LAW ENFORCEMENT OFFICER FROM REQUESTING A MOTOR VEHICLE OPERATOR'S DRIVER'S LICENSE AND VEHICLE REGISTRATION AFTER THE INITIAL PURPOSE OF A VALID STOP HAS BEEN CONCLUDED.

Whether the state's actions were reasonable is the crucial determination in any question involving the Fourth Amendment. Under the instant circumstances, it was and is reasonable for a police officer who has effected a valid stop of a motor vehicle to ask the operator of the vehicle for his or her driver's license and vehicle registration regardless of whether the initial reason for the stop has been concluded. Such a *de minimus* intrusion is constitutionally permissible. The Florida Supreme Court's decision to the contrary fails to adopt the better reasoned decisions of various federal and state courts on this issue.

In holding that a law enforcement officer cannot request to see a driver's license and vehicle registration from the operator of a vehicle which has been validly stopped,[2] the Florida Supreme Court has expanded the Court's decisions in *Florida v. Royer*, 460 U.S. 491 (1983), and *Delaware v. Prouse*, 440 U.S. 648 (1979), beyond the normal bounds of reasonableness. The majority opinion *sub judice* determined that, "Under *Prouse* and *Royer*, it appears that once a police officer has totally satisfied the purpose for which he has initially stopped and detained the motorist, the officer no longer has any reasonable grounds or legal basis for continuing the detention of the motorist." (A 4). Neither *Prouse* nor *Royer* can or should be

---

[2] Although three of the Florida Supreme Court justices (in the concurring opinion) questioned the legitimacy of the stop, both the authors of the majority and dissenting opinions presumed that the stop was legitimate based upon the officer's inability to read the temporary tag, and their conclusions of law were premised on the fact that the initial stop was valid. (A 3, 10) Even if it were contended that the officer lacked probable cause to effect a stop, the inability to read the temporary tag supplied a legitimate basis for conducting, at the very least, an investigatory stop.

expanded and interpreted so as to result in the unreasonable hindrance of law enforcement officers in the performance of their duties. Such an interpretation needlessly subjects law enforcement officers to danger and deters the legitimate exercise of a governmental function by preventing the reasonable regulation of safety laws.

In *Prouse*, the Court held that it is violative of the Fourth Amendment for police officers **to randomly** stop automobiles in order to check the validity of drivers' licenses and vehicle registrations. No proper reading of *Prouse* would permit its holding to be extended to situations where, as here, there **is** a legal basis for the initial stop.

In *Royer*, the Court cited *Terry v. Ohio*, 392 U.S. 1 (1968), for the proposition that a Fourth Amendment search must be strictly tied to and justified by the circumstances surrounding the initial detention. The "circumstances surrounding" a traffic stop include, by necessity, the ability to see the stopped motorist's driver's license and vehicle registration.[3]

What is an officer to do after he makes a proper stop but observes, before coming in contact with the driver, that the reason for the stop no longer exists (as here where the officer was able to see that the temporary tag was valid as he approached the vehicle)? Should he wave to the driver to drive on? Understandably, the driver in this situation would only be confused as to why he was stopped and permitted to leave without an explanation from the officer; and the officer could only advise of the reason for the stop if he continued the stop for a period no longer than the time needed to check the documentation and offer the explanation.[4] What if the officer

---

[3] No state in this country allows the lawful operation of a motor vehicle on a recognized roadway by a non-licensed driver. *See, e.g.*, provisions of Chapter 322, Florida Statutes (2003). In Florida, driving without a driver's license and vehicle registration is at all times a violation of Florida law.

[4] As recognized by Justice Wells in his dissent *sub judice*, "The stop is not naturally broken into two distinct parts: that of pulling the vehicle over and that of identifying the driver. An ordinary course of a traffic stop

were first to approach the driver before checking the status of the temporary tag? In that circumstance the Florida Supreme Court (and those federal and state courts which have decided the question presented in like fashion) would presumably allow an inquiry into the availability of a driver's license and vehicle registration since the officer's reason for the stop had not yet been satisfied. Thus, the Florida Supreme Court's finding of unconstitutionality hinges upon the mere sequencing of the stop; such a result comports with neither logic nor precedent.

This Court has identified legitimate concerns and has recognized that investigative detentions involving suspects in motor vehicles are especially fraught with danger to the police officers. In *Pennsylvania v. Mimms*, 434 U.S. 106 (1977), the Court held that a police officer may order persons out of an automobile during a traffic stop. In *Maryland v. Wilson*, 519 U.S. 408 (1997), this Court extended the *Mimms* rule to passengers as well as drivers. These decisions explicitly acknowledge the precarious position into which our law enforcement officers are placed whenever a stop is made of a vehicle along our public highways. The failure to permit an officer to ascertain with whom he is dealing (by examining and running the driver's license and vehicle registration, a less intrusive measure than having the driver removed from the

---

is to pull the driver over, identify the driver, and send the driver on his or her way."

The improper segmenting of a stop scenario highlights an internal anomaly in the *Diaz* majority opinion. Although holding that it was constitutionally impermissible for the officer to obtain Diaz's license and registration, it would be permissible, according to the majority, for the officer to "lawfully make contact with Mr. Diaz only to explain to him the reason for the initial stop." (A 8) Although allowed to make this "limited" contact, the officer's inability to ascertain the identity of the driver could lead to problems in the future, e.g., the problem identified by Justice Wells that "the officer would be seriously criticized if a later claim for police brutality was brought by the person being stopped and the police agency had no record of the officer even having made the stop." (A 15) It is submitted that in order to alleviate this and other problems which arise where an officer is not permitted to ascertain with whom he is dealing, it is reasonable for an officer to be able to check license and registration whenever he effects an investigatory or other valid stop.

vehicle) only serves to potentially expose the officer to even more danger.

Additionally, it is beyond dispute that our law enforcement officers are also charged with upholding their jurisdiction's safety laws. It is not unreasonable to permit an officer to assure that a stopped motorist is properly licensed by the state and that, pursuant to the registration laws, the vehicle is properly being operated on the public streets where that officer has effected a valid stop. These matters are "routine," and to deny the ability to conduct a routine check of vehicle documentation precludes "an officer's reasonable fulfillment of his or her duties in carrying out the significant state interest of protecting citizens from unlicensed drivers or unregistered vehicles." (A 11; dissent of Justice Wells)

Although a number of the courts which have addressed this issue have held in accordance with the Florida Supreme Court's *Diaz* opinion,[5] the more logical and reasonable approach is to permit an officer to engage in the most minimal intrusion of ascertaining the identity of the person whose vehicle has been stopped. In fact, the Sixth Circuit has adopted this approach. In *United States v. Elmore*, 304 F.3d 557 (6th Cir. 2002), the court determined there was no Fourth Amendment violation where an officer initially stopped a vehicle because he was unable to see a license plate and continued the contact with the driver after being able to see the plate. In so holding, the court relied upon the previous Sixth Circuit opinion in *United States*

---

[5] Various cases present the scenario where a police officer justifiably stops a motor vehicle but, upon approaching the vehicle, the officer observes that the reason for the stop has concluded. The instant case exemplifies those cases holding that, under this scenario, an officer is not permitted to seek the stopped motorist's driver's license and vehicle registration. The issue has been phrased by one court as "whether an officer who stops a vehicle based upon a reasonable but mistaken belief that the vehicle or its driver has violated or is violating a traffic law (or other law) can continue the traffic stop after the officer realizes his mistake, where no other justification for continuing the stop has yet emerged." *McGaughey v. State*, 37 P.3d 130, 136 (Okla. Crim. App. 2001). The *McGaughey* court observed that this issue has not been addressed by the Supreme Court of the United States. *Id.* at 136, 138.

v. Erwin, 155 F.3d 818, 822-23 (6th Cir. 1998),wherein it was held:

> ...[I]rrespective of whether the deputies were justified in detaining Erwin after he showed no signs of intoxication, and even if they had not, after approaching Erwin, observed conditions raising reasonable and articulable suspicion that criminal activity was "afoot," they were entitled to ask Erwin for permission to search his vehicle. A law enforcement officer does not violate the Fourth Amendment merely by approaching an individual, even when there is no reasonable suspicion that a crime has been committed, and asking him whether he is willing to answer some questions. *Florida v. Royer, 460 U.S. 491, 497, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983)*. This includes a request for consent to search the individual's vehicle. *United States v. Dunson, 940 F.2d 989, 994 (6th Cir. 1991)*. And, this consent is not vitiated merely because the valid suspicion of wrongdoing for which an individual has been stopped proves to be unfounded or does not result in prosecution and the individual is free to go before being asked. *See Ohio v. Robinette, 519 U.S. 33, 117 S. Ct. 417, 421, 136 L. Ed. 2d 347(1996)*. Of course, when a law enforcement officer no longer has any reasonable suspicion of criminal activity, the detained individual is constitutionally free to leave, and if the officer reject's the individual's indication that he would like to leave, valid consent can no longer be obtained. The fruits of a search conducted under these circumstances would be suppressed.
>
> Here, the deputies, in continuing to detain Erwin for further at-the-scene questioning, given what they observed, proceeded eminently reasonably. To have simply sent Erwin on his way, without brief further questioning at the very least, would have been plainly unreasonable, even inept, police work.[6]

---

[6] In his dissenting opinion *sub judice*, Justice Wells relied upon *Erwin* and opined:

In accordance with the Sixth Circuit, the State of Maine has also adopted similar reasoning. In *State v. Hill*, 606 A.2d 793 (Me. 1992), a police officer observed a pickup truck which had no discernible rear license plate. After the officer exited his patrol car and approached the rear of Hill's vehicle, the officer was able to observe that there was a license plate in the rear window of the cab. Nonetheless, the officer asked the driver for his license and registration. While obtaining the documentation, the officer's observations of the driver led to the driver's arrest for operating under the influence. In making the reasonableness determination required in Fourth Amendment cases, the court observed that Hill was validly stopped for a suspected traffic violation. The officer then sought to ensure that the driver was neither unlicensed nor operating an unregistered vehicle. "Balancing this significant State interest against the minimal further intrusion of asking Hill for the documents, we hold that [the officer] did not unreasonably intrude on Hill's fourth amendment rights." *Id.* at 795. *See also, People v. Bradley*, 292 Ill. App.3d 208, 685 N.E.2d 426 (Ill. 4th DCA 1997), *cert. denied*, 524 U.S. 931 (1998)(holding that a police officer who has lawfully stopped a motorist may ask to see the motorist's driver's license, proof of insurance, and the vehicle registration and, by doing so, does not raise any constitutional issues).

Contrarily, other jurisdictions take the position expressed by the Florida Supreme Court in the instant case. In *United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994), a case factually similar to the instant case, an officer stopped a vehicle when he was unable to read the expiration date on a temporary registration sticker. As he approached the vehicle on foot, the

---

> Similarly in the instant case, the police officer in no way exceeded the limits of the investigatory stop. The officer instead acted reasonably in obtaining the respondent's identification papers. The record does not indicate that the officer intended to detain the respondent any longer than simply to ascertain the respondent's identity and ensure that the respondent was a licensed driver. ... To reverse a trial court's determination of reasonableness on the bases of these facts and then to reverse a conviction is simply unjustified. (A 15)

officer was able to observe that the sticker was valid, and the court held that at that moment the purpose of the stop was satisfied. Thus, the court determined that the officer's further detention in order to make inquiry about McSwain's travel itinerary and to request his license and registration exceeded the scope of the stop's underlying justification. *Id.* at 561. The court noted that, "[A]s a matter of courtesy, the officer could explain ... the reason for the initial detention and then allow [the driver] to continue on [his or her] way without asking them to produce their driver's license and registration," citing *State v. Chatton*, 11 Ohio St.3d 59, 463 N.E.2d 1237 (1984), *cert. denied*, 469 U.S. 856 (1984), a position similar to that taken by the *Diaz* majority in Florida. *See* n. 3, *supra*.[7]

Other state jurisdictions have similarly held that an officer cannot request the license and registration of a motorist once the purpose of the stop has ended. *State v. Swords*, 258 Ga. App. 895, 575 S.E.2d 751 (Ga. 2d DCA 2002); *State v. Taber*, 73 S.W.3d 699 (Mo. Ct. App. 2002); *McGaughey v. State*, *supra*; *People v. Redinger*, 906 P.2d 81 (Colo 1995)(en banc); *State v. Farley*, 308 Ore. 91, 775 P.2d 835 (1989); *State v. DeArman*, 54 Wash. App. 621, 774 P.2d 1247 (Wash. Ct. App. 1989).

The Court should accept certiorari in this case to resolve the split of authority which exists as to whether an officer can briefly continue an investigation in order to request a stopped motorist's driver's licence and vehicle registration. Contrary to the *Diaz* opinion of the Florida Supreme Court and other courts' decisions, it is reasonable to permit an officer to do so, and that

---

[7] It is submitted that the officer's ability to explain the reason for the initial decision, but nothing more, could lead to absurd results. For example, and as asserted by Petitioner in the motion for rehearing filed in this cause before the Florida Supreme Court, if the facts reveal that no request is made by the officer for the driver to produce his license and registration but the driver voluntarily does so (as most drivers when stopped "automatically" do to show to the officer), anything learned by the officer would be excluded as evidence because such knowledge would have been acquired in an illegal "further detention." Similarly, it would be contended that any matters observed by the officer during this "further detention" should be excluded as well since the officer, under this view, has no reasonable basis to continue the detention.

view is consistent with the reasoning of *Prouse* and *Royer*. In *Prouse*, the Court noted that:

> ... the permissibility of a particular law enforcement practice is judged by balancing its intrusion on the individual's Fourth Amendment interests against its promotion of legitimate governmental interests.

Prouse, 440 U.S. at 654. Those Fourth Amendment interests are grounded on the notion of reasonableness. Whether an action is reasonable must be evaluated in the time, place, and circumstances in which it occurred. It is customary, routine, and reasonable for a person to provide their driver's license and vehicle registration during any traffic stop. Indeed, it would be odd for a motorist not to present such identification. The presentation of a driver's license as identification is a daily, ordinary occurrence at this nation's airports, banks, and supermarkets.

Absent allegations of bad faith or discriminatory enforcement by the officer, a brief request for a driver's license is permissible under the Fourth Amendment. It is reasonable to allow an officer, after effecting a valid investigatory stop, to identify with certainty the person with whom he is in contact. *See State v. Martinez*, 136 Idaho 436, 34 P.3d 1119 (2001). As discussed in *State v. Hill*, *supra*, the significant state interest of insuring drivers are licensed substantially outweighs the minimal further intrusion of asking the driver for identification. The Fourth Amendment is not offended by this *de minimus* intrusion which permits a police officer to help ensure the safety of both himself and the public in general.

CONCLUSION

The decision of the Florida Supreme Court below is in conflict with well-established Fourth Amendment law as set down in decisions of this Court as well as decisions of other federal and state appellate courts. Because of this conflict, Respondent respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

GEORGE S. LeMIEUX
Deputy Attorney General

CAROLYN M. SNURKOWSKI
Assistant Deputy Attorney General

ROBERT J. KRAUSS*
Chief - Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

HELENE S. PARNES
Assistant Attorney General

OFFICE OF ATTORNEY GENERAL
3507 E. Frontage Road – Suite 200
Concourse Center
Tampa, Florida 33607
(813) 287-7900

**Counsel of Record*

Case No. _____

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

JOHNNY DIAZ,

Respondent.

APPENDIX TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

GEORGE S. LeMIEUX
Deputy Attorney General

CAROLYN M. SNURKOWSKI
Assistant Deputy Attorney Gemeral

ROBERT J. KRAUSS*
Chief - Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals

HELENE S. PARNES
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
3507 E. Frontage Road
Tampa, Florida 33607
(813) 287-7900

**Counsel of Record*

TABLE OF CONTENTS

Opinion, Florida Supreme Court.....A-1

Order, Motion for Rehearing A-17

Opinion, Second District Court.....A-18

Supreme Court of Florida

No. SC01-2779

STATE OF FLORIDA,
Petitioner,

vs.

JOHNNY DIAZ,
Respondent.

[May 15, 2003]

LEWIS, J.

We have for review the decision in *Diaz v. State So. 2d 326 (Fla. 2d DCA 2001)*, which certified conflict with the decisions in *State v. Wikso, 739 So. 2d 390 (Fla. 4th DCA 1999)*, and *State v. Bass, 609 So. 2d 151 (Fla. 5th DCA 1992)*. We have jurisdiction. See *art. V. § 3(b)(4), Fla.* [*2] *Const.* Because the law enforcement officer here had no justification for continuing the restraint of the motorist and obtaining information from him after it was clearly determined that no question remained concerning a violation of law or the validity of the car's temporary license plate, we approve the holding in Diaz. The alleged justification for the continuing detention was found to be clearly erroneous, admittedly removed, and without foundation -- reasonable or otherwise.

The lower court detailed the relevant facts:

A Hillsborough County Deputy Sheriff observed a vehicle driven by Diaz pass by with a temporary tag on the top of te rear window. Because he could not read the tag, the deputy initiated a traffic stop. At the suppression hearing, the deputy testified that as he approached the car he could clearly read the tag including the expiration date and found nothing improper. He walked up to the driver's side of the car and obtained information from Diaz, the driver, which ultimately led to the charge against Diaz of felony driving with a suspended license.

Diaz, 800 So. 2d at 326-27. The district court of appeal then held that once the officer had [*3] found the temporary tag to be proper, no further stop, detention, or inquiry was justified. See *id. at 327.* Under very similar facts, the appellate courts in both *Bass* and *Wikso* have held that once a vehicle is properly stopped, a law enforcement officer may continue the investigation and ask to see the driver's license and registration. See *Bass, 609 So. 2d at 152; Wikso, 738 So. 2d at 390.* Based upon the facts presented in this case, and upon consideration of the jurisprudence of this Court and the United States Supreme Court interpreting the *Fourth* and *Fourteenth Amendments to the United States constitution and article I, section 12 of the Florida Constitution*, the district court of appeal in Diaz reached the proper conclusion on the totality of the facts presented.

[HN1] It is undisputed that the stopping of an automobile by a law enforcement officer constitutes a seizure and detention within the meaning of the *Fourth Amendment to the United States Constitution.* See *Delaware v. Prouse, 440 U.S. 648, 653, 59 L. Ed. 2d 660 99 S. Ct. 1391 (1979); State v. Jones, 483 So. 2d 433, 43 (Fla. 1986).* [*4] Although premised upon the very slimmest of rationales, the initial stop here was asserted to be valid based upon the officer's inability to read the expiration date on Mr. Diaz's temporary license plate. The Florida statute regulating temporary license tags provided: [HN2] "Temporary tags shall be conspicuously displayed in the rear license plate bracket or attached to the inside of the rear window in an upright

position so as to be clearly visible from the rear of the vehicle." *§320.131(4), Fla. Sat. (2000)* (emphasis added). [HN3] While the Legislature has required that permanent license plates must be "plainly visible and legible at all times 100 feet from the rear or front,"§ 316.605(1), Fla. Stat. (2002), the Legislature has failed to mandate a distance at which temporary tags must be fully legible. Notably, the temporary tag statute does not specifically require that the expiration date be legible, and it is the State itself which creates and issues the temporary license tag. See § 320.131(1), (4), Fla. Stat. (2000). The law enforcement officer here used the arguably illegible state-issued temporary tag as a tool for detention, and despite the fact that the driver had no control over the legibility of the expiration date, we assume for the purposes of this case that the initial stop by the deputy sheriff was legitimate, albeit based upon a barely justifiable purpose. With that assumption, we must turn our attention to the actions of the law enforcement officer following the initial stop and upon the further clear confirmation that no possible violation existed.

At the outset, it must be recognized that it is without question that before the personal encounter between Mr. Diaz and the deputy sheriff occurred, the initial alleged purpose for the stop had been satisfied and removed. It is undisputed that the law enforcement officer who made this stop because he was allegedly unable to read the expiration date on the vehicle's temporary tag, was in fact able to read the date upon approaching the car, and was totally satisfied that the temporary tag was valid and no further question remained. Therefore, when the deputy first made personal contact with Mr. Diaz, he was without probable cause, reasonable or articulable suspicion, or any other type of cause to believe or consider that any violation had occurred or was occurring.

In *Delaware v. Prouse*, the United States Supreme Court held that police officers may not, without violating the Fourth Amendment, randomly stop automobiles to check the validity of

the driver's license and registration. *See Prouse, 440 U.S. at 663.* There, the high Court wrote:

> Accordingly, we hold that [HN5] except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment. . . . We hold only that persons in automobiles on public roadways may not for that reason alone have their travel and privacy interfered with at the unbridled discretion of police officers.

Id. [HN6] Following the holding in Prouse, the Court further articulated that under the *Fourth Amendment*, a citizen "may not be detained even momentarily without reasonable, objective grounds for doing so." *Florida v. Royer, 460 U.S. 491, 498 (1983)* [*7] (plurality opinion). Additionally, the Court wrote: [HN7] "The scope of the detention must be carefully tailored to its underlying justification. . . .[HN8] [A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Id. *at 500*; see also *Cresswell v. State, 564 So. 2d 480, 481 (Fla. 1990)* (holding a traffic stop may last no longer than the time it takes to write a citation).

Under *Prouse* and *Royer*, it appears that [HN9] once a police officer has totally satisfied the purpose for which he has initially stopped and detained the motorist, the officer no longer has any reasonable grounds or legal basis for continuing the detention of the motorist. Here, as soon as the officer determined the validity of Mr. Diaz's temporary tag, he no longer had

reasonable grounds or any other basis, legal or otherwise, to further detain Mr. Diaz. Having completely ascertained the validity of the temporary license plate, the law enforcement officer no longer had any cause or suspicion supporting the existence of a traffic or any other violation. Further, under the facts presented here, he certainly had no articulable [*8] or reasonable suspicion to support the detention of Mr. Diaz. There was nothing whatsoever questionable about the vehicle or those persons in the vehicle and there simply was no hint of any criminal activity. While the officer's reason for the initial stop may arguably have been legitimate, once that bare justification had been totally removed, the officer's actions in further detaining Mr. Diaz equated to nothing less than an indiscriminate, baseless detention, not unlike that held to be inappropriate and unconstitutional by the United States Supreme Court in *Prouse*. The continued detention of Mr. Diaz after full knowledge had been acquired that totally removed any articulated question constituted an infringement upon his *Fourth Amendment* rights. To hold otherwise would permit law enforcement officers to randomly stop any and all vehicles having a temporary license plate designed and created by the State and conduct a further examination and interrogation of the driver, and later justify the stop by simply claiming the tag, a product created by the State, was unreadable. Such random stops and extended detentions, having no basis, are unconstitutional under *Prouse*.

Additionally, [*9] even if the extension of such stops were valid under *Prouse*, clearly under *Royer* such detention must be limited to satisfying the purpose for the initial intervention. Here, the officer stopped Mr. Diaz only because he was allegedly unable to read the expiration date on the temporary license plate. Clearly, this was not a consensual stop and detention—it occurred only after a show of authority by the law enforcement officer. Upon approaching the vehicle and prior to personal contact, the deputy was able to read the tag, which was in a proper location, and clearly determine it to be valid. Therefore, under *Royer*, when the officer clearly determined the

validity of the tag, the purpose for the stop was satisfied, and the continued detention of Mr. Diaz was improper. The investigative procedures and personal examination, requiring the production of further information, was beyond that which was necessary or reasonable to satisfy the stated purpose of the stop. Before the personal encounter ever occurred the officer had totally and completely satisfied the purpose for the stop.

Several courts have held that [HN10] once the initial purpose of a stop has concluded, a law enforcement [*10] officer may not continue to detain the operator of the vehicle. In *United States v. McSwain, 29 F.3d 558 (10th Cir. 1994)*, the court held an officer violated the *Fourth Amendment* when he further questioned a motorist and requested his license and registration after he had already determined the validity of the car's temporary registration sticker. The court reasoned that the officer no longer had reasonable, articulable suspicion that illegal activity had occurred, and therefore his actions exceeded the limits of a lawful investigation. *See id. at 561-62*; see also *People v. Redinger, 906 P.2d 81, 86 (Colo. 1995)* ("The purpose of the initial investigation having been satisfied, and in the absence of any other basis for detention or questioning of Redinger, [the officer's] conduct in requiring Redinger to produce information without either reasonable suspicion or probable cause was unwarranted."). Similarly, the Ohio Supreme Court has held that detaining a driver and requesting his license and registration after the officer had determined the validity of the car's temporary tag was "akin to the random detentions struck down by the [*11] Supreme Court in *Delaware v. Prouse*." *State v. Chatton, 463 N.E.2d 1237, 1240 (Ohio 1984).*

We recognize that other courts have held that an officer may approach the driver and ask to see the driver's license and registration even after the officer has satisfied the initial purpose of the stop. See, e.g., *United States v. Elmore, 304 F.3d 557, 559 (6th Cir. 2002)* (holding no *Fourth Amendment* violation where officer searched the car after the initial purpose for stopping the car—verifying the car's license plate—had been satisfied); *State*

v. Hill, 606 A.2d 793, 795 (Me. 1992) (balancing the significant state interest against the minimal intrusion of asking for the documents and finding no *Fourth Amendment* violation). However, we find the reasoning of the Tenth Circuit Court of Appeals and the Supreme Courts of Colorado and Ohio more persuasive. The directives of the United States Supreme Court in *Prouse* and *Royer* control here, and must be followed.

[HN11] *The Fourth Amendment* mandates that citizens remain free from unlawful searches and seizures by law enforcement officers. The real test is one of reasonableness, which involves [*12] balancing the interests of the State with those of the motorist. Here, the basis for the stop—regulation of motor vehicle operation— satisfied a legitimate state interest. However, the officer continued to detain the driver after the reason for the stop had been completely satisfied. Obviously one can debate the issue as to what constitutes a reasonable detention, but unquestionably, an endless variety of encounters and detentions are possible after a law enforcement officer stops a vehicle under facts such as these. It would be dangerous precedent to allow overzealous law enforcement officers to place in peril the principles of a free society by disregarding the protections afforded by the *Fourth Amendment*. To sanction further detention after an officer has clearly and unarguably satisfied the stated purpose for an initial stop would be to permit standardless, unreasonable detentions and investigations. Further, detentions such as that which occurred here are not sufficiently productive for law enforcement purposes, any more so than the random stops declared unconstitutional in *Prouse*. Allowing such investigations would result in boundless interrogations by law enforcement officers, [*13] unrecognized by the Court before, and also an erosion of *Fourth Amendment* protections.

Permitting an officer to further detain and interrogate a motorist, after the officer is fully satisfied that the motorist has not committed a violation of the laws of the State of Florida, violates the precepts established in *Prouse* and *Royer*. Having

verified the total validity of Mr. Diaz's temporary tag, the sheriff's deputy could lawfully make personal contact with Mr. Diaz only to explain to him the reason for the initial stop. Because the sheriff's deputy had no justification for further detention, anything more than an explanation of the stop was a violation of Mr. Diaz's *Fourth Amendment* rights.

Therefore, the decision of the Second District Court of Appeal is approved on the totality of the facts presented, and to the extent they are inconsistent with this opinion, the Wikso and Bass decisions are disapproved.

It is so ordered.

ANSTEAD, C.J., PARIENTE and QUINCE, JJ., and SHAW, Senior Justice, concur.

PARIENTE, J., concurs specially with an opinion, in which ANSTEAD, C.J., and QUINCE, J., concur.

WELLS, J., dissents with an opinion.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION, AND IF FILED, DETERMINED.

PARIENTE, J., [*14] specially concurring.

I agree with the majority's conclusion that the continuation of the detention was illegal. I write separately because I believe that the detention, based on the officer's inability to read the expiration date on the temporary tag, was also unauthorized at its inception.

The officer testified that he was approximately two to three car lengths away, perhaps fifty feet, at 8:42 p.m. on February 14, 2000, when he observed the Diaz vehicle with a temporary tag. The officer stated that although the tag was clearly visible, he stopped the vehicle because he was unable to read the expiration date on the tag. The officer had no other basis to believe that the tag was expired or that Diaz was committing an infraction by an improper display of his temporary tag.

The officer's inability to read the handwritten expiration date on a properly issued, properly displayed and otherwise legible temporary tag did not establish a valid basis for a suspected violation of the temporary tag requirements. *Section 320.131(4), Florida Statutes*, which governs temporary tags, requires only that the tag "shall be conspicuously displayed in [*15] the rear license plate bracket or attached to the inside of the rear window in an upright position so as to be clearly visible from the rear of the vehicle." (Emphasis supplied.) This statute does not contain a requirement that the date of expiration, which is written on the tag at the time it is issued, be legible from any specific distance. n1 To construe *section 320.131(4)* as requiring that a law enforcement officer be able to read the handwritten expiration date as well as the larger, preprinted identification numbers and letters on a temporary tag would mean that almost every motorist driving a vehicle with a temporary tag would be subject to police detention.

> n1. In *section 316.605(1), Florida Statutes*, which requires that the tag be "plainly visible and legible at all times 100 feet from the rear or front," pertains only to permanent tags.

In this case, the officer stated that he could not read the expiration date on the temporary tag from approximately fifty feet [*16] away at night, because the handwriting in pen was not dark enough to read until he was closer to the vehicle. This did not constitute sufficient grounds to believe that a violation of the temporary tag statute had occurred. Thus, there was no basis for a stop of Diaz's vehicle.

Assuming that the initial stop was lawful, however, I agree with the majority that once the officer was able to read the tag as he approached the vehicle, the lawful reason for the initial stop concluded. Thus, the police officer had no basis to continue the detention by asking for the driver's license and registration.

ANSTEAD, C.J., and QUINCE, J., concur.

WELLS, J., dissenting.

The majority in this case holds that a police officer with valid justification for initially stopping a driver because of a violation of the temporary tag statute is not justified in obtaining the license and registration of that driver if the officer concludes prior to doing so that the temporary tag does not in fact violate the statute. The majority reasons that such action is barred by the Fourth and Fourteenth *Amendments of the United States Constitution*. I dissent.

The very basis underlying the protections [*17] guaranteed by the *Fourth Amendment* is reasonableness. Reasonableness, in turn, is measured objectively by examining the totality of the circumstances and can only be judged by the precise facts of a particular case. *Ohio v. Robinette, 519 U.S. 33, 39 (1996)*. The circumstances presented in the instant case reveal nothing unreasonable about this officer's conduct.

The majority assumes, as do I, that the initial stop by the police officer was "legitimate." Thus, acting on a reasonable suspicion that the respondent in this case was driving with an invalid temporary tag, the officer initiated a lawful traffic stop. Although the officer subsequently determined that the respondent's temporary tag was in fact valid, the officer merely fulfilled his routine police procedures and obtained identification from the driver. Such an action is a customary and certainly expected occurrence during any regular traffic stop. See, e.g., State v. Ramos, *598 So. 2d 267, 269 (Fla. 3d DCA 1992)* (holding that police officer may request driver's license to ascertain identity of person during an investigatory stop). Unlike the cases cited [*18] by the majority and those relied upon by the district court below, the record in the instant case indicates that the officer did not attempt to do anything other than identify the driver and send him on his way. The officer did not attempt to search the vehicle or to otherwise interrogate the respondent. n2

n2. I further disagree with the majority's statement that to hold that an officer can approach a driver would " permit law enforcement officers to randomly stop any and all vehicles having temporary license plate . . . and conduct a further examination and interrogation of the driver, and later justify the stop by simply claiming the tag. . . was unreadable." Majority op. At 6. The circumstances of this case are not such that would open the door to boundless searches by overzealous law enforcement officers. Permitting a police officer to ascertain the identify of a driver subject to a lawful traffic stop and to ensure that the driver is properly licensed as a routine procedure does not give police officers a basis from which to randomly pull drivers over and subject them to interrogations. Our *Fourth Amendment* jurisprudence has long protected drivers from such conduct.

[*19]

The majority fails to consider the context in which this incident arose and the circumstances surrounding the officer's procurement of the respondent's identification. Specifically, the majority extends the *Fourth Amendment* beyond its natural boundaries of reasonableness by precluding an officer's reasonable fulfillment of his or her duties in carrying out the significant state interest of protecting citizens from unlicensed drivers or unregistered vehicles. In *Delaware v. Prouse, 440 U.S. 648 (1979)*, the United States Supreme Court recognized that the inspection of licenses and registration papers is the most effective way to ensure that only those qualified to do so are permitted to operate a motor vehicle. See *id. at 658-59* ("Vehicle stops for

traffic violations occur countless times each day; and on these occasions, licenses and registration papers are subject to inspection and drivers without them will be ascertained. . . . [I]t must be assumed that finding an unlicensed driver among those who commit traffic violations is a much more likely event than finding an unlicensed driver by choosing randomly from the entire [*20] universe of drivers."); see also *Hill v. Maine, 606 A.2d 793, 795-96 (Me. 1992)* (holding that significant state interest of ensuring drivers are licensed substantially outweighs minimal further intrusion of asking driver for identification).

Driving on public roadways is a privilege, and the privilege can be taken away as a means of meeting a legitimate legislative goal. Therefore, "the requirement of obtaining a driver's license and the exercise of the privilege of driving over the public highways, together with the correlative loss of the privilege under certain conditions, is a reasonable regulation of an individual right in the interest of the public good." *Lite v. State, 617 So. 2d 1058, 1060 (Fla. 1993)*. Because of the need for pervasive regulation of vehicles capable of traveling on the public highways, drivers possess a reduced expectation of privacy in their vehicles. "The public is fully aware that it is accorded less privacy in its automobiles because of this compelling need for regulation." *California v. Carney, 471 U.S. 386, 392 (1984)*. It is for these reasons that the Fourth Amendment [*22] applies with greater flexibility during the course of a routine traffic stop.

Police officers are required to enforce the regulations pertaining to motor vehicles. It is certainly reasonable for a law enforcement officer to request a driver's license and vehicle registration while carrying out a routine traffic stop. *United States v. Sullivan, 138 F.3d 126, 131 (4th Cir. 1998)*. The stop is not naturally broken into two distinct parts: that of pulling the vehicle over and that of identifying the driver. An ordinary course of a traffic stop is to pull the driver over, identify the driver, and send the driver on his or her way.

In *Florida v. Royer, 460 U.S. 491, 500 (1983)*, the United States Supreme Court held that a detention of a driver must be reasonably related to the circumstances which justified the interference. I believe that identifying a driver and ensuring that the driver is properly licensed is reasonably related to the circumstances surrounding a lawful traffic stop and is an effective and minimally intrusive means of enforcing traffic laws. As the United States Supreme Court has recognized, every [*22] operator of a motor vehicle must expect that the State, in enforcing its regulations, will intrude to some extent upon that operator's privacy. *New York v. Class, 475 U.S. 106, 113 (1986)*. Identifying a driver and ensuring that the driver is in compliance with the most basic regulations is not an unreasonable intrusion into that driver's privacy.

I do not believe that the United States Supreme Court's opinions in Prouse and Royer can be extended to preclude the officer's actions in the instant case as the majority suggests. Importantly, both of these cases so heavily relied upon by the majority do not indicate that a police officer may not obtain the identity of a driver. In Prouse, the United States Supreme Court held that law enforcement may not randomly stop automobiles for the sole purpose of checking the driver's license and registration. The Court reasoned that such a random stop was unconstitutional because the officers did not have reasonable suspicion that the driver was violating any law. The Court, however, further recognized the importance of ensuring that drivers are properly licensed and noted that this may [*23] be accomplished during the course of a valid traffic stop. *Delaware v. Prouse, 440 U.S. at 658-60*. It is undisputed that the stop in the instant case was valid. The police officer in this case was therefore justified in ensuring that the respondent was properly licensed.

In Royer, the high Court held that a Fourth Amendment search must be strictly tied to and justified by the circumstances surrounding the initial detention. *Florida v. Royer, 460 U.S. at 500*. In that case, the officers had detained a suspicious-acting

young man in an airport because they believed the man to be a drug courier. The Court held, however, that during the course of this detention, the officers exceeded the limits of the investigatory stop because the officers asked the defendant to accompany them to a police room, retained his airline ticket and driver's license, and did not indicate that he was free to depart. The officers further informed the defendant that he was suspected of transporting narcotics. The Court, however, noted that the officers had in fact acted legally by asking for and examining the defendant's airline ticket and driver's license, but the officers[*24] simply should have stopped there. *Id. at 501-02.*

I agree with the reasoning of the opinion of the Sixth Circuit Court of Appeals, sitting en banc, in a similar case:

Irrespective of whether the deputies were justified in detaining [the defendant] after he showed no signs of intoxication, and even if they had not, after approaching [the defendant], observed conditions raising reasonable and articulable suspicion that criminal activity was "afoot," they were entitled to ask [the defendant] for permission to search his vehicle. A law enforcement officer does not violate the *Fourth Amendment* merely by approaching an individual, even when there is no reasonable suspicion that a crime has been committed, and asking him whether he is willing to answer some questions. *Florida v. Royer, 460 U.S. 491, 497 (1983).* This includes a request for consent to search the individual's vehicle. *United States v. Dunson, 940 F.2d 989, 994 (6th Cir. 1991).* And, this consent is not vitiated merely because the valid suspicion of wrongdoing for which an individual has been stopped proves to be unfounded or does [*25] not result in prosecution and the individual is free to go before being asked. See *Ohio v. Robinette, 519 U.S. 33 (1996).* Of course, when a law enforcement officer no longer has any reasonable suspicion of criminal activity, the detained individual is constitutionally free to leave, and if the officer rejects the individual's indication that he would like to leave,

valid consent can no longer be obtained. The fruits of a search conducted under these circumstances would have to be suppressed.

Here, the deputies, in continuing to detain [the defendant] for further at-the-scene questioning, given what they observed, proceeded eminently reasonably. To have simply sent [the defendant] on his way, without brief further questioning at the very least, would have been plainly unreasonable, even inept, police work.

United States v. Erwin, 155 F.3d 818, 822-23 (6th Cir. 1998).

Similarly, in the instant case, the police officer in no way exceeded the limits of the investigatory stop. The officer instead acted reasonably in obtaining the respondent's identification papers. The record does not indicate that the officer [*26] intended to detain the respondent any longer than simply to ascertain the respondent's identity and ensure that the respondent was a licensed driver. In fact, the officer needed to have a record of whom he had stopped. For example, the officer would be seriously criticized if a later claim for police brutality was brought by the person being stopped and the police agency had no record of the officer even having made the stop. To reverse a trial court's determination of reasonableness on the bases of these facts and then to reverse a conviction is simply unjustified.

Accordingly, I dissent.

Application for Review of the Decision of the District Court of Appeal - Certified Direct Conflict of Decisions

Second District - Case No. 2D00-3542

(Hillsborough County)

Charles J. Crist, Jr., Attorney General, Robert J. Krauss, Senior Assistant Attorney General, Chief of Criminal Law, and Susan D. Dunlevy, Assistant Attorney General, Tampa, Florida,

for Petitioner

James Marion Moorman, Public Defender, and Carol J. Y. Wilson, Assistant Public Defender, Tenth Judicial Circuit, Bartow, Florida,

for Respondent

SUPREME COURT OF FLORIDA

THURSDAY, JUNE 8, 2000

STATE OF FLORIDA,	*	
	*	
Petitioner,	*	
	*	
v.	*	CASE NO. SC01-2779
	*	
JOHNNY DIAZ,	*	
	*	
Respondent(s)	*	
	*	

* * * * * * * * * * * * * * * * * * *

Petitioner's Motion for Rehearing is hereby denied.

ANSTEAD, C.J., and PARIENTE, LEWIS and QUINCE, JJ., and SHAW, Senior Justice, concur.

WELLS, J., dissents

A True Copy **JB**

TEST: cc: Robert J. Krauss
Susan D. Dunlevy
Carol J. Y. Wilson
Hon. Richard L. Ake, Clerk
Hon. James Birkhold, Clerk
Thomas D. Hall Hon. Cynthia A. Holloway, Judge
Clerk, Supreme Court

NOT FINAL UNTIL TIME EXPIRES TO FILE
REHEARING MOTION AND, IF FILED, DETERMINED

IN THE DISTRICT COURT
OF APPEAL
OF FLORIDA SECOND DISTRICT

STATE OF FLORIDA	)	
	)	
Appellant	)	
	)	
v.	)	Case No. 2D00-3542
	)	
JOHNNY DIAZ,	)	
	)	
Appellee	)	
_____	)	

Opinion filed November 14, 2001.

Appeal from the Circuit Court
for Hillsborough County;
Cynthia A. Holloway, Judge.

Robert A. Butterworth, Attorney
General, Tallahassee, and Susan D. Dunlevy,
Assistant Attorney General,
Tampa, for Appellant.

James Marion Moorman, Public Defender,
Bartow, and Carol J. Y. Wilson,
Assistant Public Defender, Bartow,
for Appellee.

DAVIS, Judge.

Johnny Diaz challenges his conviction ad sentence for felony driving with a suspended license. He argues that the trial court erred in denying is motion to suppress the identification evidence he provided the police when stopped. We agree and reverse.

A Hillsborough County Deputy Sheriff observed a vehicle driven by Diaz pass by with a temporary tag on the top of the rear window. Because he could not read the tag, the deputy initiated a traffic stop. At the suppression hearing, the deputy testified that as he approached the car he could clearly read the tag including the expiration date and found nothing improper. [*327] He walked up to the driver's side of the [**2] car and obtained information from Diaz, the driver, which ultimately led to the charge against Diaz of felony driving with a suspended license.

These facts are almost identical to those in *Palmer v. State, 753 So. 2d 679 (Fla. 2d DCA 2000)*, in which this court determin4ed that once the officer found the temporary tag to be proper, no further stop or inquiry was justified. The court there stated: "However, once Deputy Harris determined that Palmer's license tag had not expired, the justification for the stop ended, and Palmer should have been free to leave. Palmer's continued detention after the justification for the stop ended was illegal." *Id. At 680.* Accordingly, we reverse Diaz's conviction.

However, because the Fourth District in *State v. Wikso, 738 So. 2d 390 (Fla. 4th DCA 1999)*, and the Fifth District in *State v. Bass, 609 So. 2d 151 (Fla. 5th DCA 1992)*, appear to have reached a conclusion contrary to our decision in Palmer, we also certify conflict with Bass and Wikso.

Reversed.

PARKER, A.C.J., and SALCINES, J., Concur.

(2)

Supreme Court, U.S.
FILED
NOV 2 4 2003
OFFICE OF THE CLERK

Case No. 03-579

IN THE UNITED STATES SUPREME COURT

STATE OF FLORIDA,

Petitioner,

v.

JOHNNY DIAZ,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF FLORIDA

PETITIONER'S SUPPLEMENTAL BRIEF

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

GEORGE S. LeMIEUX
Deputy Attorney General

CAROLYN M. SNURKOWSKI
Assistant Deputy Attorney General

ROBERT J. KRAUSS (Counsel of Record)
Chief - Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals

HELENE S. PARNES
Assistant Attorney General

OFFICE OF THE ATTORNEY GENERAL
3507 E. Frontage Road
Tampa, Florida 33607
(813) 287-7900

---

6 pp

TABLE OF CONTENTS

Page(s)

TABLE OF AUTHORITIES ii

ARGUMENT 1

CONCLUSION 3

TABLE OF AUTHORITIES

CASES **PAGE(S)**

Adams v. Williams,
407 U.S. 143 (1972) 1

Florida v. Royer,
460 U.S. 491 (1983) 2

Hiibel v. Sixth Judicial District Court,
59 P.3d 1201 (Nev. 2002), *cert. granted*,
72 U.S.L.W. 3280 (U.S. Oct. 20, 2003)(No. 03-5554). . . .
1,2

State . Lisenbee,
116 Nev. 1124, 13 P.3d 947 (2000) 1

Terry v. Ohio,
392 U.S. 1 (1968) 1

CONSTITUTIONS & STATUTES

Fourth Amendment of the United States Constitution 1, 2

Nevada Revised Statute §171.123(3) 1

ARGUMENT

Petitioner, the State of Florida, respectfully submits this Supplemental Brief to note that certiorari was recently granted by this Honorable Court in an unrelated but relevant case, *Hiibel v. Sixth Judicial District Court*, 59 P.3d 1201 (Nev. 2002), *cert. granted*, 72 U.S.L.W. 3280 (U.S. Oct. 20, 2003)(No. 03-5554). The petition for writ of certiorari was filed in the instant case on October 8, 2003, and the grant of certiorari in *Hiibel* occurred twelve (12) days thereafter on October 20.

In *Hiibel*, an issue presented is whether the Fourth Amendment is violated where a person is required to identify himself when stopped by the police. Candidly, the considerations attendant to that question are not identical to those presented *sub judice* where the existence of probable cause is not at issue in *Hiibel*, but here the probable cause which supported a valid stop has dissipated. Nevertheless, there is sufficient similarity in the issues and underlying Fourth Amendment concerns to warrant bringing this matter to the attention of the Court.

The identification issue in *Hiibel* is premised upon the application of a particular Nevada state statute, NRS 171.123(3), which in pertinent part states:

> 3. The officer may detain the person pursuant to this section only to ascertain his identity and the suspicious circumstances surrounding his presence abroad. Any person so detained shall identify himself but may not be compelled to answer any other inquiry of any peace officer.

This statutory provision is the codification of the Court's decision in *Terry v. Ohio*, 392 U.S. 1 (1968). *See State v. Lisenbee*, 116 Nev. 1124, 13 P.3d 947 (2000). *Terry* permits a a police officer to detain a person on less than probable cause – reasonable suspicion – and a stop based upon reasonable suspicion often includes a request for the person stopped to supply his identification. *See Adams v. Williams*, 407 U.S. 143, 146 (1972). Further, temporary detentions are constitutionally

permissible on even less than reasonable suspicion; in *Florida v. Royer*, 460 U.S. 491 (1983), it was determined that a law enforcement officer does not run afoul of the Fourth Amendment merely by approaching an individual, even where there is no reasonable suspicion that criminal activity is afoot, and asking that individual whether he is willing to answer some questions. As an adjunct to these now-basic constitutional precepts, it is eminently reasonable for a police officer to be able to request identification from the individual to alleviate, at the very least, personal safety concerns of the officer. It should be of no moment whether the reason for the stop is of a continuing nature as in *Hiibel* or whether the initial reason for the stop has concluded as in the instant case. In both situations the need to engage in the *de minimus* intrusion of requesting identification is warranted and reasonable where a valid stop has been effected.

Disallowing a law enforcement officer who is engaged in the lawful performance of his duties to protect himself by not permitting that officer to ascertain with whom he is dealing serves only to sanction a much broader protection for the individual, at the expense of the officer, than that envisioned by the framers. It is undeniably correct that protection was and is to be accorded individuals from unreasonable intrusions into their homes, persons, papers, and effects, but it is submitted that this protection does not extend to a request for identification of an individual who has been validly stopped. In *Hiibel*, it is contended by Nevada that Fourth Amendment concerns are not implicated by a request of a law enforcement officer for the identification of a detained individual. The certiorari petition was filed in the instant case to seek judicial recognition that a request for identification by a police officer does not hinge upon whether the initial purpose of a stop has concluded – as long as the stop itself was valid, requesting identification does not implicate Fourth Amendment concerns. Thus, the underlying concerns presented to the Court in *Hiibel* are similar to those presented *sub judice*.

CONCLUSION

Petitioner respectfully requests this Court to grant the petition for writ of certiorari.

Respectfully submitted,

CHARLES J. CRIST, JR.
ATTORNEY GENERAL

GEORGE S. LeMIEUX
Deputy Attorney General

CAROLYN M. SNURKOWSKI
Assistant Deputy Attorney General

ROBERT J. KRAUSS*
Chief - Assistant Attorney General
Bureau Chief, Tampa Criminal Appeals
Florida Bar No. 0238538

HELENE S. PARNES
Assistant Attorney General

OFFICE OF ATTORNEY GENERAL
3507 E. Frontage Road – Suite 200
Concourse Center
Tampa, Florida 33607
(813) 287-7900

**Counsel of Record*